

Stop the Flynt Gambling Proposition

Who Opposes the Gaming Revenue Act of 2004?

(as of May 14, 2004)

Statewide Public Safety Organizations

California Coalition of Law Enforcement Associations
California Police Chiefs Association
California State Firefighters' Association
California District Attorneys Association
Peace Officers Research Association of California *
California Correctional Peace Officers Association
Chicano Correctional Workers Association *
Minorities in Law Enforcement

County Sheriffs

Alameda County Sheriff Charles C. Plummer
Alpine County Sheriff John M. Crawford
Amador County Sheriff Michael Prizuich
Butte County Sheriff Perry L. Raniff
Colusa County Sheriff Scott D. Marshall
Contra Costa County Sheriff Warren E. Rupf
Del Norte County Sheriff Dean D. Wilson
Glenn County Sheriff Robert A. Shadley, Jr.
Inyo County Sheriff Dan Lucas
Kings County Sheriff Ken Marvin *
Lake County Sheriff Rodney K. Mitchell
Lassen County Sheriff Bill Freitas *
Marin County Sheriff Robert T. Doyle
Mariposa County Sheriff James H. Allen
Mendocino County Sheriff Anthony J. Craver
Modoc County Sheriff Bruce Mix
Mono County Sheriff Daniel A. Paranick
Placer County Deputy Sheriff David Hunt
Riverside County Sheriff Bob Doyle
San Benito County Sheriff Curtis J. Hill
San Bernardino County Sheriff Gary S. Penrod
San Diego County Sheriff William B. Kolender
Santa Cruz County Sheriff Mark Tracy
Shasta County Sheriff Jim Pope *
Solano County Sheriff Gary R. Stanton

Stop the Flynt Gambling Proposition

A Coalition of Indian Gaming Tribes, major funding by

United Auburn Indian Community and Pala Band of Mission Indians.

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County Sheriffs (cont'd)

Sonoma County Sheriff Bill Cogbil
Sutter County Sheriff Jim Denney
Tehama County Sheriff Clay D. Parker
Tuolumne County Sheriff Richard L. Rogers
Ventura County Sheriff Bob Brooks
Yolo County Sheriff E.G. Prieto
Yuba County Sheriff Virginia R. Black

Crime Victims Organizations

Crime Victims United of California
Justice for Murdered Children
Justice for Murder Victims

Local Public Safety Leaders and Organizations

Riverside County District Attorney Grover Trask *
San Bernardino County District Attorney Michael A. Ramos *
San Diego County District Attorney Bonnie M. Dumanis
Tustin Police Chief Steve Foster
Carlsbad Police Officers Association
Chico Police Officers' Association
Combined Law Enforcement Association of Riverside County *
Deputy Sheriffs' Association of San Diego County
Half Moon Bay Police Officers' Association
Huntington Beach Police Officers Association *
Imperial County Sheriffs Association
Milpitas Police Officers Association
Ontario Police Officers Association
Placer County Deputy Sheriffs Association *
Riverside Sheriffs Association
San Bernardino County Safety Employees' Benefit Association
Yolo County Deputy Sheriffs Association
Safety Employees Benefit Association President Jim Erwin
Riverside County Sheriff Cois M. Byrd (Retired)
Laguna Beach Police Chief Neil J. Purcell (Retired)

Education Community

California County Superintendents Educational Services Association
California Association of School Business Officials
Contra Costa County Board of Education *
Imperial County Board of Education *
Inyo County Board of Education *
Mendocino County Board of Education
Alpine County Superintendent of Education James W. Parsons *
Amador County Superintendent of Education Mike Carey
Del Norte County Superintendent of Education Francis Lynch
El Dorado County Superintendent of Education Vicki Barber

Education Community (cont'd)

Fresno County Superintendent of Education Peter G. Mehas
Imperial County Superintendent of Education John D. Anderson
Inyo County Superintendent of Education George Lozito
Mariposa County Superintendent of Education Patrick J. Holland *
Mendocino County Superintendent of Education Paul A. Tichinin
Monterey County Superintendent of Education William D. Barr *

Other National, Statewide and Local Organizations

Sierra Club California
National Tax Limitation Committee
California Black Chamber of Commerce
California Nations Indian Gaming Association
National Native American Bar Association
Greater Los Angeles African American Chamber of Commerce
Sacramento Civil Rights Network

Local Government Officials

Riverside County Supervisor Marion Ashley
Riverside County Supervisor John F. Tavaglione
Antioch Councilmember Arne Simonsen
Diamond Bar Mayor Bob Zirbes
Fortuna Mayor Mel Berti
Los Angeles Councilmember Bernard C. Parks
Los Angeles Councilmember Jan C. Perry
Lynwood Mayor Louis Byrd
City of Riverside Planning Commissioner Stan E. Brown

Federal and State Officials

U.S. Representative Bob Filner
U.S. Representative Maxine Waters
State Senate Majority Leader Don Perata
State Senator James F. Battin, Jr.
State Senator James L. Brulte
State Senator Denise Moreno Ducheny
State Senator Dennis Hollingsworth
State Senator Tom McClintock
State Senator Nell G. Soto
Assemblymember Russ Bogh
Assemblymember Bonnie Garcia
Assemblymember Ray Haynes
Assemblymember Rick Keene
Assemblymember Christine Kehoe *
Assemblymember Jay LeSuer
Assemblymember Ken Maddox
Assemblymember Bill Maze
Assemblymember George A. Plescia
Assemblymember Sharon Runner
Former Assemblymember Roderick D. Wright *

Newspapers

Alameda Times Star
Black Voice News
Fremont Argus
Hayward Review *
Los Angeles Times
North County Times
Oakland Tribune
Sacramento Bee
San Diego Union Tribune
San Mateo County Times *
San Mateo Daily Journal *
Santa Rosa Press-Democrat
Torrance Daily Breeze
Tri-Valley Herald (Pleasanton)

Native American Tribes and Tribal Organizations

Barona Band of Mission Indians
Bear River Band of Rohnerville Rancheria
Big Lagoon Rancheria
Big Sandy Rancheria
Bishop Paiute Tribe
Cabazon Band of Mission Indians
Cahto Tribe – Laytonville Rancheria
Cloverdale Rancheria of Pomo Indians
Colusa Indian Community Council, Cachil Dehe Band of Wintun Indians
Coyote Valley Band of Pomo Indians
Dry Creek Rancheria Band of Pomo Indians
Elem Indian Colony
Elk Valley Rancheria
Ewiiapaayp Band of Kumeyaay Indians
Greenville Rancheria
Habemotolel Pomo of Upper Lake (a.k.a. Upper Lake Band of Pomo Indians)
Hopland Band of Pomo Indians
Ione Band of Miwok Indians
Jackson Rancheria Band of Miwok Indians
Jamul Indian Village
Karuk Tribe of California
La Jolla Band of Luiseno Indians
Lytton Rancheria – Lytton Band of Pomo Indians
Manchester Point Arena Band of Pomo Indians
Manzanita Band of the Kumeyaay Nation *
Mesa Grande Band of Mission Indians
Middletown Rancheria
Mooretown Rancheria
Morongo Band of Mission Indians
North Fork Rancheria of Mono Indians
Pala Band of Mission Indians
Paskenta Band of Nomlaki Indians
Pauma Band of Mission Indians
Potter Valley Tribe

Native American Tribes and Tribal Organizations (cont'd)

Redding Rancheria
Redwood Valley Rancheria
Resighini Rancheria
Rumsey Band of Wintun Indians
San Pasqual Band of Mission Indians
Santa Ysabel Band of Diegueno Indians
Scotts Valley Band of Pomo Indians
Sherwood Valley Rancheria
Smith River Rancheria
Soboba Band of Luiseno Indians
Sycuan Band of the Kumeyaay Nation
Tule River Indian Reservation
Twenty-Nine Palms Band of Mission Indians
United Auburn Indian Community
Viejas Band of Kumeyaay Indians
Yurok Tribe

Fiscal Impact of the Proposed "Gaming Revenue Act of 2004" on Police Departments throughout California

If the voters pass the Gaming Revenue Act initiative in November 2004, it is a near certainty¹ that 16 specifically identified horseracing tracks and card clubs will receive an exclusive right to operate 30,000 slot machines. Under the act's provisions, a portion of the revenues generated from the net winnings of these slot machines will be provided to local governments for additional sheriffs and police officers.

The initiative's "Findings and Purpose" section asserts that funds generated from the Gaming Revenue Act will help alleviate California's current unprecedented budget deficit and dire fiscal crisis. However, for several reasons described below, the initiative does not actually relieve local government budget deficits, and in the case of police departments, may further strain already limited funding.

This is because the Gaming Revenue Act mandates that:

- All funds received must be used to "supplement" and not "supplant" current spending. As a result, police departments must use the funds they receive to expand current staffing and not to balance existing budgets.
- The funds earmarked for police departments are also limited "exclusively for additional neighborhood police officers." By specifically directing the expenditure of funds in this way, we believe police departments are not allowed to use initiative revenues to equip, support, train or supervise these additional neighborhood police officers. These additionally incurred costs will have to be borne by existing police department budgets or other revenues.

More specific information on these two issues and the potential fiscal impacts they generate are described in the following sections.

¹ The act requires all 61 tribes with state gaming compacts to voluntarily agree to pay 25% of their net winnings to the trust fund, accept other state mandates, and submit amended compacts to the Secretary of the Interior within 90 days of the initiative's passage, or the 16 specified horseracing tracks and card clubs shall immediately be authorized to operate 30,000 slot machines. These requirements establish a near certainty that the 16 specified horseracing tracks and card clubs will be granted the right to operate 30,000 slot machines, since obtaining 100% agreement from 61 sovereign nations to voluntarily provide 25% of their winnings is unreasonable and the 90-day timeline is unachievable.

Supplement rather than supplant

The initiative's funds cannot be used by local governments to help alleviate their current budget deficits due to provisions in the initiative mandating that local government revenues from the initiative are not to be used as substitute funds, but rather shall ***supplement*** the amount of funds currently being spent on these programs. Specifically, the initiative provides funds generated under its provisions for police departments shall be used exclusively as supplements to funds for additional neighborhood police officers, and not to ***supplant***² funds already used for this purpose.

Consequently, each city police department must consume existing budget dollars to establish a baseline or "maintenance of effort" expenditure for neighborhood police officers to be eligible for these new funds. In order to meet the initiative's "supplement" requirement, police departments would have to fully fund existing activities before spending initiative revenues. As a result, the initiative will not help alleviate the current police department or local government budget problem at all.

Exclusively for additional neighborhood police officers

The initiative clearly directs that specified funds received by cities are to be used "***exclusively*** for additional neighborhood police officers." By specifically earmarking the expenditure of funds in this way, we believe the initiative does not allow the use of its funds to equip, support, supervise or train these additional neighborhood police officers. Since providing vehicles, training, record keeping, communications and supervision of California peace officers are necessary expenditures that must be incurred in order for a city to deploy a neighborhood police officer, police departments and cities will have to fund these costs from other, already limited revenues.

The cost to equip, support and train a peace officer can consume up to \$1 for every \$1 spent on a neighborhood police office salary; consequently, in order to receive one dollar from the initiative's trust fund a police department or city will have to provide an additional dollar from their currently tight budgets. As a consequence, the initiative's funds actually exacerbate the current local government budget crisis rather than relieve it.

Moreover, the initiative allocates funds for neighborhood police officers and sheriffs to cities and counties based on a "per capita basis", without additional clarification. Although city populations are straightforward, county per capita populations are usually described in two ways – the total population within the

² The initiative uses the term "supplant" and "not to be used as substitute funds" in describing this provision. Webster defines supplant as "to take the place of" or to "supersede or oust."

county's geographic boundaries, or the population of non-incorporated areas of the county. Obviously, if county-wide total per capita is used, the allocation to the counties will be significantly greater than if only non-incorporated populations are used. Further, the mathematics of the allocation creates a lower allocation to the cities within a county as the allocation to their county increases. Consequently, depending on which county per capita population is used, cities in urbanized counties could see a significant revenue swing. But again, no matter the allocation basis used or the amount of funds made available under the initiative, we believe police departments and cities will have to find additional revenue to support the costs of fully deploying these additional neighborhood police officers.

About this analysis

This independent fiscal analysis was prepared by Sjoberg+Evashenk Consulting, Inc. Firm partners, Kurt Sjoberg, MBA, CFE, CFSA, former California State Auditor, and Marianne Evashenk, CPA, CGFM, former Chief Deputy State Auditor, conducted the analysis. Collectively they possess more than 50 years experience conducting financial analyses and evaluations of federal, state and local government activities.

THE GAMING REVENUE ACT OF 2004

SECTION 1. Title.

This Act shall be known as and may be cited as "The Gaming Revenue Act of 2004." This Act may also be cited as "The Gaming Revenue Act" or the "Act."

SECTION 2. Findings and Purpose.

The People of the State of California hereby make the following findings and declare that their purpose in enacting this Act is as follows:

(a) California now faces an unprecedented budget deficit of billions of dollars that particularly threatens funding for education, police protection, and fire safety. As a result of California's budget crisis, the State needs to find new ways to generate revenues without raising taxes. In March 2000, Proposition 1A was enacted, which triggered an unprecedented expansion of Indian casino gaming, gave Indian tribes a monopoly on casino gaming, and has led to billions of dollars in profits for Indian tribes, but little or no taxes to the State. Moreover, local governments and communities have not been adequately protected, the State does not have sufficient regulation and oversight of tribal casino gaming, and tribal casinos have not complied with state laws applicable to other businesses and designed to protect California citizens, such as laws regarding the environment and political contributions. Gaming tribes also have failed to fully fund a trust fund to promote the welfare of Indian tribes that do not operate large casinos. Some Indian tribes have attempted to acquire land far away from their reservations or traditional lands to be used as casinos and not for use as traditional reservations. Tribes have expended over \$120 million dollars in political contributions but have refused to comply with disclosure requirements.

(b) California should request that all Indian gaming tribes voluntarily share some of their gaming profits with the State that can be used to support public education, and local police and fire services, and address other problems associated with tribal casino gaming, and in the event all Indian gaming tribes do not do so, California should grant gaming rights to other persons who will share substantial revenue with the State that can be used to support public education, and local police and fire services.

(c) The Governor should be authorized to negotiate amendments to all existing compacts with Indian tribes to allow these Indian tribes to continue to have the exclusive right to operate gaming devices in the State of California if the Indian tribes agree to pay twenty-five percent (25%) of their winnings from such devices to a gaming revenue trust fund and agree to comply with State laws, including laws governing environmental protection, gaming regulation and campaign contributions and their public disclosure.

(d) In the event all Indian tribes with existing compacts do not agree to these terms, five existing horseracing tracks and

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The measure's lengthy discussion of findings and purpose is political campaign propaganda designed to sound appealing to voters, even though its primary points are completely undermined by the actual legal language of the measure.

The measure starts off by describing California's huge state budget deficit, and later describes its purpose to "raise revenues immediately through this initiative to help solve California's current fiscal crisis." In reality, not a penny of the money to be generated by the measure can be used to help close the state's budget gap. All of the money is earmarked for specific purposes, including profits for the card club and racetrack owners, allocations for horse racing associations, and monies to local governments. The only money that goes to the state is for the increased costs of regulating the new casinos at card clubs and racetracks.

The statement that Indian casino gaming has produced "little or no taxes to the state" is untrue; patrons pay state taxes on winnings; non-member employees pay state taxes on earnings; tribal members living off-reservation pay state income taxes on distributions; members pay state sales taxes on off-reservation purchases; and tribes pay more to the State than the State would receive from this initiative.

California gaming tribes already share substantial gaming revenue with the state, as provided in the current 20 year gaming compacts entered into between the state and tribes and approved by the voters in 2000. Those funds are available to be used to support state and local governments impacted by gaming, to assist non-gaming tribes, and for other purposes determined by the legislature. The measure does not provide any money for "public education."

The measure doesn't authorize "negotiations"—it coerces tribes to accept illegal provisions. Federal law requires that negotiations be conducted in "good faith," but this measure actually would prevent the Governor from doing so. It is deceptively constructed, because it includes conditions that its proponents know are impossible to satisfy. (Further discussed below.)

SECTION BY SECTION ANALYSIS

eleven existing gambling establishments, where forms of legal gambling and wagering already occur, should have the right to operate a limited number of gaming devices, provided they pay thirty-three percent (33%) of their winnings from the operation of such gaming devices to cities, counties, and a gaming revenue trust fund to be used for education, and police and fire services, and provided they comply with strict legal requirements on the operation and location of such gaming devices.

(e) *In addition to paying substantial taxes, the owners of gambling establishments and horseracing tracks authorized to operate gaming devices would have to be licensed by the State Gambling Control Commission under the Gambling Control Act, which requires that they be persons of good character, honesty and integrity, and persons whose prior activities, reputation and associations entitle them to receive a license from the State.*

(f) *Permitting five existing horseracing tracks and eleven licensed gambling establishments to operate gaming devices and requiring them to pay thirty-three percent (33%) of their winnings from these gaming devices will generate revenues estimated to exceed \$1 billion annually. These funds will help alleviate California's dire fiscal crisis, which particularly threatens funding for education, police protection and fire safety, and will help mitigate the impact on cities and counties where gaming occurs.*

(g) *The Gaming Revenue Act will establish the Gaming Revenue Trust Fund, the sole purpose of which will be to ensure that the revenues raised by this Act are distributed in accordance with the Act. The Act will also establish a Board of Trustees consisting of individuals who are engaged in public school education, law enforcement, and fire protection.*

(h) *The Gaming Revenue Act will provide funding for the existing Division of Gambling Control and the existing California Gambling Control Commission for the purpose of regulating gaming authorized by this Act.*

(i) *The Gaming Revenue Act will increase the monies distributed to non-gaming Indian Tribes by guaranteeing that each such tribe will receive at least \$1.2 million annually, and will award \$3 million annually to responsible gambling programs.*

(j) *The Gaming Revenue Act Trust Fund will distribute fifty percent (50%) of the net revenues directly to county boards of education to be used to improve educational services for abused and neglected children and children in foster care.*

(k) *The Gaming Revenue Act Trust Fund will distribute thirty-five percent (35%) of the net revenues directly to local governments for additional neighborhood sheriffs and police officers.*

(l) *The Gaming Revenue Act Trust Fund will distribute fifteen percent (15%) of the net revenues directly to local governments for additional firefighters.*

(m) *The revenues generated for county offices of education for improving the educational outcomes of abused and neglected children and children in foster care and local governments for police protection and fire safety by this Act are not to be used as substitute funds but rather shall supplement the total amount of*

The measure authorizes the owners of specific card clubs and racetracks (including Hustler Casino owner Larry Flynt) to open giant urban casinos free of local zoning and other controls and exempt from future state and local tax increases. (Further discussed below.)

As discussed above, the measure does not provide any money to help close the state's budget gap.

The Board of Trustees is a political body without public accountability. (Further discussed below.)

Tribal gaming revenue already goes to the state for paying regulatory costs under the current compacts.

Tribal gaming revenue already goes to helping non-gaming tribes under the current compacts, and tribal gaming payments to the state are already authorized to be used for responsible gambling programs. No standards are set for who gets awards, or in what amounts.

This money may not get to where it can be used effectively. None of the money would go to schools. (Further discussed below.)

The means of distribution of money for local law enforcement is hopelessly unclear, and local governments may be unable to use this money. (Further discussed below.)

Local governments may be unable to use this money. (Further discussed below.)

The measure may not actually result in any net new revenue for local governments, and local governments can't spend the money for locally-determined priorities and needs. (Further discussed below.)

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money allocated for county offices of education and local governments.

(n) *Indian tribes have attempted to acquire land at locations off of their reservations or distant from their traditional Indian lands to be used solely as casinos and not for use as traditional reservations. Gaming on these newly acquired lands would be detrimental to the surrounding communities. Therefore, the Gaming Revenue Act prohibits the location of gaming establishments by Indian tribes on newly or recently acquired lands.*

(o) *In order to reasonably restrict the growth of non-Indian gaming, non-Indian gaming authorized by this Act will be limited to the sites of five existing horseracing tracks located in the counties of Alameda, Los Angeles, Orange and San Mateo, and the sites of eleven existing gambling establishments located in the Counties of Los Angeles, San Diego, Contra Costa, and San Mateo. To insure that there are no new gambling establishments other than those in existence as of the enactment of the Act, the current limitation on the issuance of new gambling licenses, which expires in 2007, will be made permanent. The purpose of such restrictions is to exercise control over the proliferation of gambling.*

(p) *The expansion of Indian gaming has led to conflicts between tribes and local governments. In some cases, tribes have failed to take sufficient steps to address local concerns and impacts. Therefore, this Act will authorize the Governor to negotiate amendments to all existing compacts pursuant to which all tribes agree to enter into good faith negotiations with county and city governments to address and mitigate community impacts.*

(q) *To clarify legal jurisdiction over Indian casinos, state courts should have jurisdiction over any criminal or civil proceeding arising under this Act, under a compact, or related to a tribal casino. Therefore, this Act will authorize the Governor to negotiate amendments to all existing compacts pursuant to which all tribes agree that state courts will have jurisdiction over such disputes.*

(r) *Indian tribes have used their gambling profits to spend well over \$120 million on campaign contributions and political activities in California. But some Indian tribes maintain that they are sovereign nations and do not have to comply with California's laws and regulations relating to political contributions and reporting. Because these tribal political expenditures result substantially from, and often concern, gaming activities in California, this Act will authorize the Governor to negotiate amendments to all existing compacts pursuant to which all tribes agree to comply with the California Political Reform Act.*

(s) *While some terms of this Act concern conditions tribal casinos must meet if Indian tribes are to retain a monopoly over slot machines, it is the express intent of the voters to raise revenues immediately through this initiative to help solve California's current fiscal crisis, regardless of whether those revenues come from tribal or non-tribal gaming, regardless of court decisions regarding Indian gaming, regardless of changes in federal law, or regardless of any challenges or efforts by the Indian tribes or others to delay or circumvent this Act. Therefore, if all Indian tribes with*

The measure suggests that new tribal casinos would be detrimental to surrounding communities, but then authorizes 16 new card club and racetracks casinos that would somehow not be detrimental to surrounding communities. In any event, federal law, not state law, controls where tribes may locate casinos.

The measure plays favorites by rewarding the private owners of 16 card clubs and racetracks with the constitutional right to open giant casinos, while preventing other card clubs and racetracks from doing so. There is no rationale or objective criteria for selecting the 11 card clubs for new gambling casinos while preventing such casinos at the state's 88 other card clubs. Instead, the 11 appear to have been chosen as a result of political deal-making.

The chosen locations are all in urban areas. To date, tribal gaming has largely taken place on tribal lands in rural areas. This measure brings gambling casinos into urban neighborhoods.

While expressing concern about the relationship between tribes and local governments, the measure explicitly overrides any local restrictions or regulations that might restrict or prevent the new card club and racetrack casinos.

Forcing all legal issues into state courts is unconstitutional. (Further discussed below.)

While tribes are sovereign nations, nearly all voluntarily report their political contributions in compliance with state law. Citing this as an issue is a politically-motivated effort to appeal to voters.

Again, the measure claims that it is focused on raising revenue. As discussed below, its clear focus is on expanding gambling at 16 specified card clubs and racetracks. The measure would not result in any new money being paid to the state's general fund.

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existing compacts do not agree to share with the State twenty-five percent (25%) of their winnings from gaming devices and do not agree to the other conditions on tribal gaming set forth in this Act within the time limits provided in this Act, it is the express intent of the voters to immediately allow licensed gambling establishments and authorized horseracing tracks to operate a limited number of gaming devices, provided they pay thirty-three percent (33%) of their winnings from the operation of such gaming devices to cities, counties, and the Gaming Revenue Trust Fund.

SECTION 3. Section 19 of Article IV of the California Constitution is amended to read:

SEC. 19

(a) The Legislature has no power to authorize lotteries and shall prohibit the sale of lottery tickets in the State.

(b) The Legislature may provide for the regulation of horse races and horse race meetings and wagering on the results.

(c) Notwithstanding subdivision (a), the Legislature by statute may authorize cities and counties to provide for bingo games, but only for charitable purposes.

(d) Notwithstanding subdivision (a), there is authorized the establishment of a California State Lottery.

(e) The Legislature has no power to authorize, and shall prohibit casinos of the type currently operating in Nevada and New Jersey.

(f) Notwithstanding subdivisions (a) and (e), and any other provision of state law, the Governor is authorized to negotiate and conclude compacts, subject to ratification by the Legislature, for the operation of ~~slot machines~~ gaming devices and for the conduct of lottery games and banking and percentage card games by federally recognized Indian tribes on Indian lands in California in accordance with federal law. Accordingly, ~~slot machines~~ gaming devices, lottery games, and banking and percentage card games are hereby permitted to be conducted and operated on tribal lands subject to those compacts.

(f)(g) Notwithstanding subdivision (a), the Legislature may authorize private, nonprofit, eligible organizations, as defined by the Legislature, to conduct raffles as a funding mechanism to provide support for their own or another private, nonprofit, eligible organization's beneficial and charitable works, provided that (1) at least 90 percent of the gross receipts from the raffle go directly to beneficial or charitable purposes in California, and (2) any person who receives compensation in connection with the operation of a raffle is an employee of the private nonprofit organization that is conducting the raffle. The Legislature, two-thirds of the membership of each house concurring, may amend the percentage of gross receipts required by this subdivision to be dedicated to beneficial or charitable purposes by means of a statute that is signed by the Governor.

(h) Notwithstanding subdivisions (e) and (f), and any other provision of state law, the Governor is authorized to negotiate and conclude amendments to all existing compacts with all Indian tribes in accordance with the provisions of this subdivision (h). An "existing compact" means a gaming compact entered into between

This provision breaks the agreements made between gaming tribes and the state, and approved by the voters in 2000. Those agreements set forth the terms and conditions for tribal gaming, including tribal payments into funds to benefit affected local communities and non-gaming tribes,

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the State and an Indian tribe prior to the effective date of the Gaming Revenue Act of 2004. All compacts amended pursuant to this subdivision (h) shall include the following terms, conditions and requirements:

- (1) The Indian tribe shall agree to pay twenty-five percent (25%) of its net win from all gaming devices operated by it or on its behalf to the Gaming Revenue Trust Fund. Such payments shall be made monthly and shall be due within 30 days, of the end of each month. "Net win" means the wagering revenue from all gaming devices operated by the Indian tribe or on its behalf retained after prizes or winnings have been paid to players or to pools dedicated to the payment of such prizes and winnings, and prior to the payment of operating or other expenses. Such payments shall commence immediately after federal approval of the amended compacts
- (2) The Indian tribe shall agree to report to the Division of Gambling Control the net win on all gaming devices operated by or on behalf of it. Such reports shall be submitted monthly, shall be due within 30 days of the end of each month, and shall be available to the public upon request.
- (3) The Indian tribe shall agree to pay for an annual audit performed by an independent firm of certified public accountants approved by the California Gambling Control Commission to ensure that the net win is properly reported and the payment is properly paid to the Gaming Revenue Trust Fund. The audit report shall be available to the public upon request.
- (4) The Indian tribe shall agree to comply with the California Political Reform Act.
- (5) The Indian tribe shall agree that its casino facilities shall comply with the California Environmental Quality Act.
- (6) The Indian tribe shall agree to enter into good faith negotiations with any city or county within which the Indian lands are located where Class III gaming is conducted to mitigate local naming

and limit casino gaming to tribal lands.

The measure appears to authorize negotiations between the Governor and each of the tribes—a back and forth discussion which could lead to a voluntary agreement between the parties. There is no back and forth here—the measure dictates the pre-established terms of the compact amendment. Moreover, there is nothing voluntary here—the measure forces tribes to accept the specific terms if they are to maintain the benefit of their existing negotiated compacts. Not only are some of the onerous terms illegal themselves, as discussed below, but the whole coercive scheme is inconsistent with IGRA's requirement for good faith negotiations between state and tribal governments.

Requiring all California tribes to pay 25% of their net win (gross revenues after payment of prizes) to the state—on top of the substantial amount they already pay—clearly violates the federal law that restricts states' ability to tax tribes. Of the many states with tribal gaming, only Connecticut has received federal approval for a full 25% payment, and the circumstances there—two giant casinos in the middle of the densely populated northeast—are unique in the country and far different than the situation in California. The federal government would never approve applying such a high payment percentage to every one of the tribes in California—regardless of their size or location.

Independent audits of tribal casinos already are required by Federal law and the existing compacts.

IGRA prohibits States from using compacts to extend their jurisdiction beyond what is reasonably related to and necessary for the regulators of gaming.

The existing compacts already require environmental review and good-faith discussions between tribes and local governments and mitigation of off-reservation environmental impacts.

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related impacts within a reasonable time followings the State's execution of the compact. The state courts shall have exclusive Jurisdiction to resolve any dispute regarding the failure to reach an agreement or the enforcement of the agreement.

- (7) The Indian tribe shall agree to comply with all provisions of the Gambling Control Act, and shall agree to be subject to the jurisdiction of the California Gambling Control Commission and Division of Gambling Control.
- (8) The Indian tribe shall agree that state courts shall have exclusive jurisdiction over any criminal or civil proceeding arising from or related to the Gaming Revenue Act, arising from or related to the compact, or arising from or related to any act or incident occurring on the premises of a tribal casino.

The powers of the State and the applicability of state law to Indian tribes and Indian casinos pursuant to this subdivision (h) are to be construed consistently with the fullest extent of State's rights and powers under federal law to reach agreements with Indian tribes with tribal consent. No tribe with an existing compact is required by this subdivision (h) to agree to amend its existing compact. Nothing in this Act waives or restricts the civil or criminal jurisdiction of the State under Public Law 280 (18 U.S.C. Sec. 1162), and the State may not waive such jurisdiction in any compacts.

(i) Notwithstanding subdivisions (a) and (e), and any other provision of state or local law, in the event amendments to all existing compacts with all Indian tribes as provided in subdivision (h) are not entered into and submitted to the Secretary of Interior within 90 days of the effective date of the Gaming Revenue Act of 2004, owners of authorized gambling establishments and owners of authorized horseracing tracks shall immediately thereafter be authorized to operate not more than a combined total of 30,000 gaming devices. In the event tribal monopolies are adjudicated to be illegal, in the event the amended compacts are not approved or considered approved pursuant to the Indian Gaming Regulatory Act, or in the event subdivision (h) is invalidated, or delayed more than 90 days after this Act would otherwise take effect, by the State, the federal government, or any court, owners of authorized gambling establishments and owners of authorized horseracing tracks shall immediately thereafter be authorized to operate the gaming devices authorized by this section. For purposes of this Act, "authorized gambling establishment" shall mean a site in the counties of Los Angeles, San Diego, Contra Costa or San Mateo at which 14 or more gaming tables were authorized to be operated as of September 1, 2003 pursuant to the Gambling Control Act, except such sites that were actually taken into trust for an Indian tribe or Indians after September 1, 2003. For purposes of this Act, "authorized horseracing track" shall mean a site in the counties of Alameda, Los Angeles, Orange or San Mateo at which horseracing was conducted by a thoroughbred racing association or quarter horse racing association that was licensed pursuant to the Horse Racing Law to conduct more than 50 days or nights of racing in 2002. For

The measure provides that any dispute concerning an incident in a tribal casino must be taken to state court. California already has criminal jurisdiction over Indian lands. This provision is unconstitutional, as it would prevent a federal claim or crime from being heard in federal court

Federal law restricts a state's power to coerce tribes into ceding jurisdiction.

While the measure is presented as a choice between additional regulation of and payments from tribal gaming on the one hand, and new gambling at card clubs and racetracks on the other, this provision makes clear the real purpose of the measure – to ensure that certain card clubs and racetracks immediately get to operate 30,000 slot machines. Under this provision, unless every single tribe that has a compact with the state agrees to be subjected to every single provision in the measure, then slot machine gambling will expand to card clubs and racetracks. Even if all tribes did agree, if the Governor doesn't submit the new gaming compacts for federal approval within 90 days, then slot machine gambling will expand to card clubs and racetracks. Even if the compacts are submitted within 90 days, if the federal government rejects the new compact provisions (as the above discussion makes clear they will), then slot machine gambling will expand to card clubs and racetracks. If a court determines the mandated compact amendments are illegal, as it will, then slot machine gambling will expand to card clubs and racetracks. If a court even says it will need more time to decide whether those amendments are illegal, then slot machine gambling will expand to card clubs and racetracks. In other words, the measure makes absolutely clear that slot machine gambling will expand to card clubs and racetracks no matter what.

This section specifically exempts the authorized card clubs

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purposes of this Act, "site" shall mean the real property on which an authorized horseracing track or an authorized gambling establishment was located as of September 1, 2003 and shall include real property adjacent to the site.

and racetracks from "any other provision of state or local law." That means, once authorized, the construction and operation of the giant new casinos are exempted from state environmental laws (CEQA), local zoning laws, and any other law that would stand in their way.

Naming the counties where the casinos would be located hides the identities of the private owners (including Larry Flynt) of the card clubs and racetracks who are hand-picked to open new casinos under the measure. Most of these new casinos would be in urban locations in the Los Angeles area, and three would be in the San Francisco Bay Area. There is no rationale for choosing these facilities over others.

The casinos are tied to specific locations, not to ongoing card games and horseracing. In other words, the measure allows the owners of card clubs and racetracks to stop conducting card games and horse races altogether and still conduct casino gambling at their sites.

New casinos can be built on land "adjacent" to the existing card club or racetrack. "Adjacent" legally means "nearby," but not necessarily touching, the current site – meaning that "nearby" neighborhoods could be casino locations, even if the "nearby" site is residential or even in another city.

The operation of these gaming devices shall be subject to the following provisions:

(1) Payments.

- a. Owners of authorized gambling establishments and authorized horseracing tracks shall pay thirty percent (30%) of the net win from gaming devices operated by them to the Gaming Revenue Trust Fund created pursuant to this section. Such payments shall be made monthly and shall be due within 30 days of the end of each month. "Net win" means the wagering revenue from gaming devices prorated pursuant to this Act retained after prizes or winnings have been paid to players or to pools dedicated to the payment of such prizes and winnings, and prior to the payment of operating or other expenses.
- b. Owners of authorized gambling establishments and authorized horseracing tracks shall report to the Division of Gambling Control the net win on all gaming devices operated by or on behalf of them. Such reports shall be submitted monthly, shall be due within 30 days of the end of each month, and shall be available to the public upon request.

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c. Owners of authorized gambling establishments and authorized horseracing tracks shall pay for an annual audit performed by an independent firm of certified public accountants approved by the California Gambling Control Commission to ensure that the net win is properly reported and the payment is properly paid to the Gaming Revenue Trust Fund. The audit report shall be available to the public upon request.

d. Owners of authorized gambling establishments and authorized horseracing tracks shall pay two percent (2%) of their respective net win from gaming devices operated by them to the city in which each authorized horseracing track and authorized gambling establishment is located. In the event an authorized gambling establishment or an authorized horseracing track is not located within the boundaries of a city, the payment imposed by this Act shall be made to the county in which the authorized gambling establishment or authorized horseracing track is located. Such payments shall be made monthly and shall be due within 30 days of the end of each month.

e. Owners of authorized gambling establishments and authorized horseracing tracks shall pay one percent (1%) of their respective net win from gaming devices operated by them to the county which each authorized gambling establishment and authorized horseracing track is located. Such payments shall be made monthly and shall be due within 30 days of the end of each month.

(2) Number and Location of Authorized Gaming Devices.

a. A total of 30,000 gaming devices are authorized to be operated by owners of authorized horseracing tracks and owners of authorized gambling establishments, which are allocated as follows:

i. For authorized horseracing tracks:

Three thousand gaming devices for each authorized horseracing track. In order to ensure the maximum generation of revenue for the Gaming Revenue Trust Fund, in the event that the owners of an authorized horseracing track for any reason cease to have or lose the right to operate any of the gaming devices authorized by this Act, the gaming devices allocated to that authorized horseracing track shall be reallocated equally among the remaining authorized

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horseracing tracks. Notwithstanding the limit of 3,000 gaming devices, owners of authorized horseracing tracks may also transfer, sell, license, or assign their rights to own and operate one or more gaming devices to other authorized horseracing tracks or authorized gambling establishments, but in no event shall the total number of gaming devices authorized to be operated at an authorized horseracing track exceed 3,800. The owners of gaming devices that are reallocated, or are transferred, sold, licensed, or assigned pursuant, to this subdivision, shall make the distributions required by California Business and Professions Code Section 19609.

A racetrack casino can operate up to 3,800 slot machines, 25% more than the biggest Las Vegas casino.

- ii. For authorized gambling establishments:
 - a. Authorized gambling establishments located in Los Angeles County authorized as of September 1, 2003 to operate 100 or more gaming tables shall be authorized to operate 1700 gaming devices each; authorized gambling establishments in Los Angeles County authorized as of September 1, 2003 to operate between 14 and 99 gaming tables shall be authorized to operate 1000 gaming devices each; and all other authorized gambling establishments shall be authorized to operate 800 gaming devices each.
 - b. Licensed gambling establishments that are not authorized gambling establishments under this section shall be licensed for 4 gaming devices for each table authorized pursuant to the Gambling, Control Act as of September 1, 2003 up to a maximum of 2000 gaming devices in total, which they cannot operate at their gambling establishments, but may transfer, sell, or assign the rights to own or operate such gaming devices to authorized gambling establishments.
 - c. In order to ensure the maximum generation of revenue for the Gaming Revenue Trust Fund, in the event the owners of an authorized gambling establishment described in subdivision (a) for any reason cease to have or lose the right to operate

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any of the gaming devices authorized by this Act, such gaming devices shall be transferred or allocated to authorized gambling establishments pro rata according to the allocation in subdivision (i)(2)(a)(ii)(a). Notwithstanding the limitation on gaming devices imposed by subdivision (i)(2)(a)(ii)(a), authorized gambling establishments may also transfer, sell, license, or assign their rights to own and operate one or more gaming devices to other authorized gambling establishments or authorized horseracing tracks, but in no event shall the total number of gaming devices authorized to be operated at an authorized gambling establishment exceed 1,900.

A card club can operate up to 1,900 slot machines. Facilities like Hollywood Park in Inglewood, which operates both a card club and a racetrack, could operate a giant casino with 5,700 total slot machines. This casino would be among the largest in the world, and would have as many slots as the Mirage, Caesar's Palace, and the Las Vegas Hilton combined.

d. In the event that the allocation of gaming devices set forth in subdivision (i)(2)(a)(ii) exceeds 15,000, the gaming devices authorized pursuant to subdivision (i)(2)(a)(ii)(b) shall be reduced ratably to bring the total number of gaming devices allocated to all authorized gambling establishments to 15,000 or less.

b. The owners of an authorized horseracing track may, in accordance with provisions of applicable law, relocate its racing meeting to another site whether or not it is an authorized horseracing track, or discontinue its racing operation. In the event they do so, however, the gaming devices authorized to be operated by them may only be operated at an authorized horseracing track or an authorized gambling establishment.

The racetrack owners can continue operating slot machines at a racetrack site even if the racetrack closes or is authorized to move to another location.

c. In order to ensure the maximum generation of revenue for the Gaming Revenue Trust Fund, the owner or operator of an authorized horseracing track and the owner or operator of an authorized gambling establishment whose facilities are located in the same city may agree upon the maximum number of gaming devices that may be operated at each such facility subject to approval of any such agreement by the Gambling Control Commission, which shall make its decision of whether to approve any such agreement based upon a determination that any such agreement is in the interests of regulated

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gaming in the State of California. Any such agreement approved by the Gambling Control Commission shall not exceed three years in duration.

(3) Suspension of Authorization.

The authorization to operate gaming devices and to transfer, sell, or assign rights to gaming devices pursuant to this subdivision may be suspended by the Gambling Control Commission for failure to make the payments imposed by this subdivision within 30 days of such payments becoming due.

(4) Prohibition on Additional Fees, Taxes, and Levies.

The payments imposed pursuant to this Act are in lieu of any and all other fees, taxes or levies, including but not limited to revenue, receipt or personal property taxes, that may be charged or imposed, directly or indirectly, against authorized horseracing tracks or authorized gambling establishments, their patrons, gaming devices, employers or suppliers, by the State, cities or counties, excepting fees, taxes or levies that were in effect and imposed prior to September 1, 2003 that applied to horseracing and controlled games with cards or tiles, or that are applied generally to commercial activities, including sales and use, income, corporate or real property taxes. The physical expansion of gaming facilities or the operation of gaming devices authorized by this Act shall not be considered an enlargement of gaming operations under any local ordinance related to fees, taxes, or levies.

(5) Licenses.

The owners of authorized gambling establishments and the owners of authorized horseracing tracks shall be licensed by the State Gambling Control Commission under the Gambling Control Act.

(6) Other Laws.

The Act shall supercede any inconsistent provisions of state, city or county law relating to gaming devices including, but not limited to, laws regarding the transportation, manufacture, operation, sale, lease, storage, ownership, licensing, repair or use of gaming devices authorized in this Act. In order to encourage the maximum generation of revenue for the Gaming Revenue Trust Fund, the operation of gaming devices authorized pursuant to this Act is not

If the card club or racetrack refuses to make required payments to the state fund, the Commission is merely authorized, but not required to, suspend slot machine authority.

The measure exempts the authorized card clubs and racetracks from future state and local tax increases.

The measure overrides all local laws limiting gambling operations or providing for local revenue from expanded gambling operations.

All state and local laws relating to slot machine operations are not only overridden, they may never be changed in the future. The provisions of this measure are enshrined in the Constitution forever. This provision violates the initiative power which reserves to the people the right to change any

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subject to any prohibition in state or local law now existing or hereafter enacted.

(j) Gaming Revenue Trust Fund.

- (1) There is hereby established the Gaming Revenue Trust Fund in the State Treasury that shall receive all payments pursuant to the requirements of subdivisions (h) and (i).
- (2) There is hereby established the Board of Trustees to administer the Gaming Revenue Trust Fund. The Board of Trustees shall be comprised of 5 members appointed by the Governor. Of the 5 members, 2 shall be engaged in public school education, 1 shall be engaged in law enforcement, 1 shall be engaged in fire protection and 1 shall be a certified public accountant. Each member shall be a citizen of the United States and a resident of this state. No more than 3 of the 5 members shall be members of the same political party. Of the members initially appointed, 2 shall be appointed for a term of two years, 2 shall be appointed for a term of three years, and 1 shall be appointed for a term of four years. After the initial terms, the term of office of each member shall be four years. The Governor shall appoint the members and shall designate one member to serve as the initial chairperson. The initial chairperson shall serve as chairperson for the length of his or her term. Thereafter, the chairperson shall be selected by the Board of Trustees. The initial appointments shall be made within three months of the operative date of this Act. The Board of Trustees shall approve all transfers of monies from the Gaming Revenue Trust Fund. The Board of Trustees shall engage an independent firm of certified public accountants to conduct an annual audit of all accounts and transactions of the Gaming Revenue Trust Fund.
- (3) The monies in the Gaming Revenue Trust Fund shall be distributed as follows:
 - (a) Not more than one percent of the monies annually to the Division of Gambling Control and the California Gambling Control Commission for the cost of carrying out its administrative duties pursuant to this Act, and for reimbursement of any State department or agency that provides any service pursuant to the provisions of this Act.
 - (b) Monies sufficient to guarantee that each non-gaming tribe shall receive \$1.2 million annually from the Indian Gaming Revenue Sharing Trust Fund as codified in the California Government Code. "Non-gaming tribe" shall mean a federally recognized

state law or constitutional provisions in the future by initiative.

While a politically-appointed board of trustees is created to administer and disburse funds which allegedly will exceed \$1 billion every year, the board has virtually no accountability. Its members are all appointed by the Governor, rather than having some members appointed by the Governor and some by the legislature. The members are not subject to Senate confirmation, so the Governor can choose whoever suits his political purposes. The measure does not limit the salaries of Board members. The measure does not require the Board to meet regularly, does not require a quorum for it to conduct business, does not require a majority vote for it to act, and does not specify whether proxy voting is allowed. The lack of direction and accountability is particularly disturbing given the huge amount of money involved and the important policy questions (discussed below) that the Board must resolve.

It appears to be up to the Board of Trustees to decide the cost of carrying out the Division's and the Commission's duties. More importantly, the measure leaves it to the Board of Trustees to determine their own administrative budget for such expenses as salaries, travel, and staff. If the Board uses most of the provided funds for its own expenses, little would be left for the Division and the Commission for oversight of the new gambling casinos.

Non-gaming tribes already receive significant funding annually from the Revenue Sharing Trust Fund.

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Indian tribe which operates fewer than 350 gaming devices.

- (c) \$3 million to be awarded annually by the Board of Trustees to responsible gambling programs.

No standards are provided for what is a "responsible gambling program." It is left completely to the discretion of the Board. As a result, the Board could give the entire \$3 million to a single program based on any criteria the Board sets.

- (d) After the distributions required pursuant to subdivisions (3)(a),(b). and (c), the remaining monies shall be distributed as follows:

1. Fifty percent (50%) to county offices of education to provide services for abused and neglected children and children in foster care. These monies shall be allocated to each county office of education according to each county's proportionate share of the annual statewide total of child abuse referral reports for the prior calendar year and shall be used to improve educational outcomes of abused and neglected children and children in foster care. Each county office of education shall allocate these funds to county child protective services agencies to provide these services. Funds received by each county child protective service agency shall be used for the following purposes:

These funds, which are designated to improve the education of abused, neglected, and foster care children, may never get into the hands of people who can provide that help, because the schools don't get the money.

First, the money is to be allocated by the Board based on the number of referral reports. This number may be unrelated to need, however, since only a fraction of these referral reports lead to a child being placed in the child welfare system. (A county would receive more money under the measure for increasing the number of referrals, even if they were not justified.)

Second, while the money is to be used for educational purposes, none of the money actually goes into the education system. The money goes from the state fund to the county office of education, which then turns around and gives it to the county child protective service agency. The child protective service agency may not be the best place to operate these educational programs. In fact, some existing programs are operated by the county offices of education, which would not get to keep any money under the measure. Other programs are operated through the State Department of Education, which also gets no money under the measure. In short, this allocation scheme creates new bureaucracy and layers of red tape, in the guise of helping educate children.

- i. Out-stationing county child protective services social workers in schools;
- ii. Providing appropriate caseloads to ensure that professional staff will have sufficient time to provide services necessary to improve the educational outcomes of abused and neglected children and children in foster care;
- iii. Providing services to children in foster care to minimize mid-year transfers from school to schools;
- iv. Hiring Juvenile court workers whose responsibility it is to ensure the implementation of court orders issued by juvenile court judges

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affecting a foster child's educational performance.

Each county child protective service agency shall be subject to all accountability standards including student performance, enrollment, school stability and performance measured by the percentage of children at grade level on standardized tests as provided by state and federal law. Each county child protective agency shall use funds received pursuant to this section in a manner that maximizes the counties' ability to obtain federal matching dollars for services to children in the child protective services system.

(e) Thirty-five percent (35%) to local governments on a per capita basis for additional neighborhood sheriffs and police officers.

(f) Fifteen percent (15%) to local governments on a per capita basis for additional firefighters

The board will have to decide which local governments are entitled to funds. Clearly cities and counties are covered, but what about other local agencies that employ police or fire personnel, including school districts, special districts, regional transportation authorities, etc.? Also unclear is what is a "neighborhood sheriff and police officer"? Allocating funds on a per capita basis doesn't seem to work in areas where "local governments" overlap, or where the jurisdiction of the police and sheriffs overlap.

The measure's inflexible restrictions on the use of these funds will tie the hands of local governments. Funds are specifically authorized to be used only for additional law enforcement officers and firefighters. There is no authorization to use funds for the training, equipment and facilities necessary to make them effective. Funds can't be used to avoid layoffs of existing law enforcement officers and firefighters, or to keep newly hired officers and firefighters. Rural communities with volunteer fire departments will not be able to use the funds at all.

Federal law (IGRA) grants governors the authority to decide whether or not to concur with a federal decision to take land in trust in most cases. This provision inappropriately prohibits the Governor from exercising that authority. The provision also violates IGRA by prohibiting the Governor from entering into a compact with any tribe that may be recognized by the federal government in the future.

(k) The Governor shall not consent, concur or agree to the location of any tribal casinos on newly acquired land pursuant to 25 U.S.C. §2719(b)(1)(a). Further, any compact entered into by the State pursuant to 25 U.S.C. §2710(d) shall only be for class III gaming on Indian lands actually taken into trust by the United States for the benefit of an Indian tribe prior to September 1, 2003, except for land contiguous to reservations existing as of that date.

SECTION 4. Section 19609 is added to the Business and Professions Code to read as follows:

19609.

(a) Unless otherwise defined in this chapter, the terms used in this section shall have the meaning ascribed to them in the Gaming Revenue Act of 2004 ("the Act").

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(b) Three quarters of one percent (.75%) of the net win from all gaming devices operated by, or on behalf of, owners of authorized horseracing tracks upon which a thoroughbred racing meeting was conducted in 2002 shall be distributed for thoroughbred incentive awards and shall be payable to the applicable official registering agency and thereafter distributed as provided in the California Horse Racing Law.

(c) One and one-half percent (1½%) of the net win from all naming devices operated by, or on behalf of, owners of authorized horseracing tracks upon which a thoroughbred racing meeting was conducted in 2002 shall be distributed to each of those thoroughbred racing associations and racing fairs that are not authorized horseracing tracks in the same relative proportions that such thoroughbred racing associations or racing fairs generated commissions during the preceding calendar year. A lessee of an authorized horseracing track as of the effective date of the Act shall not be deemed to be an authorized horseracing track for the purposes of this Section.

(d) Seventeen and three quarters percent (17.75%) of the net win from all gaming devices operated by, or on behalf of, owners of authorized horseracing tracks upon which a thoroughbred racing meeting was conducted in 2002 shall be pooled ("the pooled net win") and shall be distributed in the form of purses for thoroughbred horses in accordance with the provisions of this subdivision (d).

- (i) The pooled net win shall be allocated to thoroughbred racing associations and racing fairs throughout the State of California and shall be distributed among each of them in such manner as to equalize on an average daily basis purses for thoroughbred races other than stakes and special events. Notwithstanding the foregoing, pooled net win may be allocated to supplement purses for thoroughbred races so the thoroughbred racing associations and racing fairs may maintain up to their historic relative proportions between overnight races, and stakes races and special events. Increases in the aggregate amount of purses for stakes races of thoroughbred racing associations and racing fairs resulting from pooled net win contributions shall be determined in accordance with an agreement signed by all the thoroughbred racing associations and the organization responsible for negotiating thoroughbred purse agreements on behalf of thoroughbred horsemen.
- (ii) Notwithstanding the provisions of subdivision (d)(i) of this Section, the funds distributable to thoroughbred racing associations and racing fairs from the pooled net win shall be allocated in such a manner as to cause average daily purses for thoroughbred races, other than stakes races and special events, to be the percentages of the average daily purses for such races conducted by thoroughbred racing associations in the Central and Southern zone as set forth below:

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- (a) 90% for thoroughbred racing associations in the Northern zone;
- (b) 65% for a racing fair in the Central zone;
- (c) 50% for racing fairs in the Northern zone other than the Humboldt County Fair;
- (d) 7½% for the Humboldt County Fair.

- (iii) Notwithstanding the provisions of this subdivision (d) to the contrary, the allocation of purses among the thoroughbred racing associations and the racing fairs maybe altered upon approval of the California Horse Racing Board, in accordance with an agreement signed by all of the thoroughbred racing associations and the organization responsible for negotiating thoroughbred purse agreements on behalf of horsemen.
- (iv) The California Horse Racing Board shall be responsible for the oversight of the distribution of the pooled net win in accordance with the provisions of this subdivision (d).

(e) Eighteen and one-half percent (18.5%) of the net win from all gaming devices operated by owners of an authorized horseracing track upon which a quarter horse racing meeting was conducted in 2002 shall be paid to supplement purses of races conducted by a quarter horse racing association.

(f) One and four tenths percent (1.4%) of the net win from gaming devices operated by owners of an authorized horse racing track described in subdivision (e) above shall be paid to supplement the purses of harness races conducted by a harness racing association that conducts at least 150 days or nights of harness racing annually at the California Exposition and State Fair, and one-tenth of one percent (.1%) of such net win shall be paid to the harness racing association described in this subdivision (f).

SECTION 5. *Section 19805.5 is added to the Business and Professions Code to read as follows:*

Sec. 19805.5.

As used in this chapter, and in the Gaming Revenue Act of 2004, “gaming device” shall mean and include a slot machine under state law or any Class III device under the Indian Gaming Regulatory Act. The operation of a gaming device by a tribe, entity or person authorized to operate gaming devices under the Gaming Revenue Act shall constitute controlled gaming under State law.

The measure authorizes card clubs and racetracks to use 30,000 “gaming devices.” Here, near the end of the measure, the term “gaming device” is defined – and it goes well beyond the slot machines that appear to be the subject of the measure. This definition says that “gaming device” includes a slot machine or any Class III device under IGRA. IGRA, however, doesn’t define Class III devices. IGRA defines Class III gaming as any gaming that is not Class I or II. Devices that are used in class III gaming include a wheel and ball (roulette), dice (craps), and potentially cards (blackjack and baccarat). In other words, this definitional loophole could expand the casino gambling at card clubs and racetracks to include a number of casino games in addition to the slot machines. The Attorney General’s title and summary recognizes that the measure does not authorize only slot machines – it refers to the use by card clubs and racetracks of “slot machines/gaming devices.” Tribes are not authorized to operate roulette or craps games.

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SECTION 6. *Section 19863 of the Business and Professions Code is amended to read as follows:*

Sec.19863.

A publicly traded racing association or a qualified racing association, or their successors in interest, shall be allowed to operate only one ~~gaming~~ gambling establishment, and the ~~gaming~~ gambling establishment shall be located on the same ~~premises~~ site as the entity's racetrack was located in 2002.

SECTION 7. *Section 19985 is added to the Business and Professions Code to read as follows:*

Sec.19985.

(a) Except as provided in this section, the Gambling Control Act, including, but not limited to, the jurisdiction and powers of the Division and Commission to enact regulations, to enforce applicable law, to conduct background investigations and to issue licenses and work permits, shall apply to authorized horseracing tracks as defined in the Gaming Revenue Act, and to the operators of gaming devices thereon, including their successors in interest, in and to the same extent the Gambling Control Act applies to gambling establishments.

(b) Employees of authorized horseracing tracks who are not owners, shareholders, partners or key employees, and whose job responsibilities do not involve controlled games, shall not be required to obtain work permits pursuant to this Chapter.

SECTION 8. *Section 19962 of the Business and Professions Code is amended to read as follows:*

19962.

(a) On and after the effective date of this chapter, neither the governing body nor the electors of a county, city, or city and county that has not authorized legal gaming within its boundaries prior to January 1, 1996, shall authorize legal gaming.

(b) No ordinance in effect on January 1, 1996, that authorizes legal gaming within a city, county, or city and county may be amended to expand gaming in that jurisdiction beyond that permitted on January 1, 1996.

(c) ~~This section shall remain operative only until January 1, 2007, and as of that date is repealed.~~

(c) This section is not intended to prohibit gaming authorized by the Gaming Revenue Act of 2004.

SECTION 9. *Section 19963 of the Business and Professions Code is amended to read as follows:*

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19963.

(a) In addition to any other limitations on the expansion of gambling imposed by Section 19962 or any provision of this chapter, and except as provided in the Gaming Revenue Act of 2004, the commission shall not issue a gambling license for a gambling establishment that was not licensed to operate on December 31, 1999, unless an application to operate that establishment was on file with the division prior to September 1, 2000.

~~(b) This section shall remain in effect only until January 1, 2007, and as of this date is repealed, unless a later enacted statute, that is enacted January 1, 2007, deletes or extends that date.~~

SECTION 10. Section 19817 of the Business and Professions Code is amended to read as follows:

The commission shall establish and appoint a Gaming Policy Advisory Committee of 10 members. The committee shall be composed of representatives of controlled gambling licensees, authorized horse racing tracks under the Gaming Revenue Act, representatives of gaming tribes, and members of the general public. The executive director shall, from time to time, convene the committee for the purpose of discussing matters of controlled gambling regulatory policy and any other relevant gambling-related issue. The recommendations concerning gambling policy made by the committee shall be presented to the commission, but shall be deemed advisory and not binding on the commission in the performance of its duties or functions. ~~The committee may not advise the commission on Indian gaming.~~

SECTION 11. Section 12012.6 is added to the Government Code to read as follows:

(a) Notwithstanding Government Code sections 12012.25 and 12012.5, and any other provision of law, the Governor is the designated state officer responsible for negotiating and executing, on behalf of the state, tribal-state gaming compacts with federally recognized Indian tribes located within the State of California pursuant to the federal Indian Gaming Regulatory Act of 1988 (18 U.S.C. Sec. 1166 to 1168, incl., and 25 U.S.C. Sec. 2701 et seq.) for the purpose of authorizing class III gaming, as defined in that act, on Indian lands within this state. Nothing in this section shall be construed to deny the existence of the Governor's authority to have negotiated and executed tribal-state gaming compacts prior to the effective date of this section.

(b) The Governor shall submit a copy of any executed tribal-state compact to the Secretary of State who shall forward a copy of the executed compact to the Secretary of the Interior for his or her review and approval, in accordance with paragraph (8) of subsection (d) of Section 2710 of Title 25 of the United States Code.

SECTION 12. Section 12012.75 of the Government Code is amended to read as follows:

There is hereby created in the State Treasury a special fund

The owners of the card clubs and racetracks are protected from competition from other commercial entities. The only gambling licenses that the state can issue are for new owners of the property where card club and racetrack casinos are located.

Under current California law, a tribal gaming compact is negotiated between the Governor and a tribe, but then must be ratified by the legislature. This provision eliminates the role of the legislature as a check on the exercise of the Governor's authority.

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called the "Indian Gaming Revenue Sharing Trust Fund" for the receipt and deposit of moneys derived from gaming device license fees that are paid into the fund pursuant to the terms of tribal-state gaming compacts, and monies received from the Gaming Revenue Trust Fund, for the purpose of making distributions to noncompact tribes. Moneys in the Indian Gaming Revenue Sharing Trust Fund shall be available to the California Gambling Control Commission, upon appropriation by the Legislature, for the purpose of making distributions to noncompact tribes, in accordance with the Gaming Revenue Act and tribal-state gaming compacts.

SECTION 13. *Section 8.3 is added to Article XVI of the California Constitution to read as follows:*

Sec. 8.3

(a) Funds appropriated pursuant to the Gaming Revenue Act of 2004 shall not be deemed to be part of "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B" as that term is used in paragraphs (2) and (3) of subdivision (b) of Section 8.

(b) Revenues derived from payments made pursuant to the Gaming Revenue Act of 2004 shall not be deemed to be "General Fund revenues which may be appropriated pursuant to Article XIII B" as that term is used in paragraph (1) of subdivision (b) of Section 8 nor shall they be considered in the determination of "per capita General Fund revenues" as that term is used in paragraph (3) of subdivision (b) and in subdivision (e) of Section 8.

SECTION 14. *Section 14 is added to Article XIII B of the California Constitution to read as follows:*

Sec. 14

(a) For purposes of this article, "proceeds of taxes" shall not include the revenues created by the Gaming Revenue Act of 2004.

(b) For purposes of this article, "appropriations subject to limitation" of each entity of government shall not include appropriations of revenues from the Gaming Revenue Trust Fund created by the Gaming Revenue Act of 2004.

SECTION 15. Amendment

The statutory provisions of this Act may be amended only by a vote of two-thirds of the membership of both houses of the Legislature. All statutory amendments to this Act shall be to further the Act and must be consistent with its purposes.

SECTION 16. Consistency With Other Ballot Measures

The provisions of this Act are not in conflict with any initiative measure that appears on the same ballot that amends the

Article 2, § 10(c) of the Constitution allows the legislature to put amendments to an initiative on the ballot – whether or not they are consistent or inconsistent with the initiative. This provision contradicts that Constitutional authority by preventing the legislature from putting certain amendments before the voters.

While the purpose of the measure is supposedly to increase state and local revenue, this provision makes it clear that

SECTION BY SECTION ANALYSIS

California Constitution to authorize gaming of any kind. In the event that this Act and another measure that amends the California Constitution to permit gaming of any kind are adopted at the same election, the courts are hereby directed to reconcile their respective statutory provisions to the greatest extent possible and to give effect to every provision of both measures.

SECTION 17. Additional Funding

No monies in the Gaming Revenue Trust Fund shall be used to supplant federal, state or local funds used for child protective and foster care services, neighborhood sheriffs and police officers and firefighters but shall be used exclusively to supplement the total amount of federal, state and local funds allocated for child protective services and foster care which improve the educational outcomes of abused and neglected children and children in foster care and for additional sheriffs, police officers and firefighters.

SECTION 18. Judicial Proceedings

*In any action for declaratory or injunctive relief, or for relief by way of any extraordinary writ, wherein the construction, application, or validity of Section 3 of this Act or any part thereof is called into question, a court shall not grant any temporary restraining order, preliminary or permanent injunction, or any peremptory writ of mandate, certiorari, or prohibition, or other provisional or permanent order to restrain, stay, or otherwise interfere with the operation of the Act except upon a finding by the court, based on clear and convincing evidence, that the public interest will not be prejudiced thereby, and **no such order shall be effective for more than 15 calendar days.** A court shall not restrain any part of this Act except the specific provisions that are challenged.*

SECTION 19. Severability

If any provision of this Act or the application thereof to any person or circumstances is held invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this Act that can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this Act are severable.

the measure is designed to authorize gaming, and should be read consistently with any other measure which authorizes gaming.

Local revenue provided by the measure can be used only to hire new government employees—it can't be used to close local government budget gaps or prevent the elimination or curtailment of local services.

In addition, nothing in this provision prevents the state from reducing other funding provided to local governments – meaning that the local governments may receive no net new funding from the measure.

This provision puts the measure above the law itself. Courts are stripped of their authority to stop the operation of slot machines by card clubs and racetracks, even if a court finds the measure's provisions to be illegal and unenforceable. This attempt to strip courts of their authority to restrain illegal conduct itself violates constitutional provisions on separation of powers.